

## Federal Trade Commission

## § 4.15

systems of records are exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of 5 U.S.C. 552a, and from the provisions of this section, except as otherwise provided in 5 U.S.C. 552a(k)(2):

Investigational, Legal, and Public Records—FTC  
Disciplinary Action Investigatory Files—FTC  
Clearance to Participate Applications and the Commission's Responses Thereto, and Related Documents—FTC  
Management Information System—FTC  
Office of the Secretary Control and Reporting System—FTC  
Office of Inspector General Investigative Files—FTC  
Stenographic Reporting Service Requests—FTC  
Identity Theft Complaint Management System—FTC  
Freedom of Information Act Requests and Appeals—FTC  
Privacy Act Requests and Appeals—FTC  
Information Retrieval and Indexing System—FTC

(3) Pursuant to 5 U.S.C. 552a(k)(5), investigatory materials compiled to determine suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only where disclosure would reveal the identity of a confidential source of information, in the following systems of records are exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of 5 U.S.C. 552a, and from the provisions of this section, except as otherwise provided in 5 U.S.C. 552a(k)(5):

Personnel Security File—FTC

[40 FR 40780, Sept. 3, 1975, as amended at 46 FR 26292, May 12, 1981; 48 FR 4280, Jan. 31, 1983; 55 FR 37700, Sept. 13, 1990; 55 FR 38801, Sept. 21, 1990; 57 FR 10808, Mar. 31, 1992; 58 FR 7047, Feb. 4, 1993; 63 FR 45648, Aug. 26, 1998; 64 FR 3014, Jan. 20, 1999; 64 FR 69397, Dec. 13, 1999; 66 FR 64144, Dec. 12, 2001; 67 FR 123, Jan. 2, 2002]

### § 4.14 Conduct of business.

(a) Matters before the Commission for consideration may be resolved either at a meeting under § 4.15 or by written circulation. Any Commissioner may direct that a matter presented for consideration be placed on the agenda of a Commission meeting.

(b) A majority of the members of the Commission in office and not recused from participating in a matter (by virtue of 18 U.S.C. 208 or otherwise) constitutes a quorum for the transaction of business in that matter.

(c) Any Commission action, either at a meeting or by written circulation, may be taken only with the affirmative concurrence of a majority of the participating Commissioners, except where a greater majority is required by statute or rule or where the action is taken pursuant to a valid delegation of authority. No Commissioner may delegate the authority to determine his or her vote in any matter requiring Commission action, but authority to report a Commissioner's vote on a particular matter resolved either by written circulation, or at a meeting held in the Commissioner's absence, may be vested in a member of the Commissioner's staff.

[42 FR 13540, Mar. 11, 1977, as amended at 50 FR 53306, Dec. 31, 1985; 70 FR 53297, Sept. 8, 2005]

### § 4.15 Commission meetings.

(a) *In general.* (1) Meetings of the Commission, as defined in 5 U.S.C. 552b(a)(2), are held at the principal office of the Commission, unless otherwise directed.

(2) *Initial announcements of meetings.* For each meeting, the Commission shall announce:

(i) The time, place and subject matter of the meeting,

(ii) Whether the meeting will be open or closed to the public, and

(iii) The name and phone number of the official who will respond to requests for information about the meeting.

Such announcement shall be made at least one week before the meeting except that where the agency determines pursuant to 5 U.S.C. 552b(e)(1) to call the meeting on less than one week's notice, or where the agency determines to close the meeting pursuant to paragraph (c)(2) of this section, the announcement shall be made at the earliest practicable time.

(3) *Announcements of changes in meetings.* Following the announcement of a meeting, any change in the time, place or subject matter will be announced at

the earliest practicable time, and, except with respect to meetings closed under paragraph (c)(2) of this section, any change in the subject matter or decision to open or close a meeting shall be made only as provided in 5 U.S.C. 552b(e)(2).

(4) *Deletions from announcements.* The requirements of paragraphs (a)(2) and (a)(3) of this section do not require the disclosure of any information pertaining to a portion of a closed meeting where such disclosure is likely to concern a matter within the scope of 5 U.S.C. 552b(c).

(5) *Dissemination of notices.* Notices required under paragraphs (a)(2) and (a)(3) of this section will be posted at the principal office of the Commission, recorded on a telephone message device, and, except as to notices of meetings closed under paragraph (c)(2) of this section, submitted to the FEDERAL REGISTER for publication. In addition, notices issued under paragraph (a)(2) of this section one week in advance of the meeting will be sent to all persons and organizations who have requested inclusion on a meeting notice mailing list, and will be issued as a press release to interested media.

(b) *Open meetings.* (1) Commission meetings shall be open to public observation unless the Commission determines that portions may be closed pursuant to 5 U.S.C. 552b(c).

(2) Any person whose interest may be directly affected if a portion of a meeting is open, may request that the Commission close that portion for any of the reasons described in 5 U.S.C. 552b(c). The Commission shall vote on such requests if at least one member desires to do so. Such requests shall be in writing, filed at the earliest practicable time, and describe how the matters to be discussed will have any of the effects enumerated in 5 U.S.C. 552b(c). Requests shall be addressed as follows:

Closed Meeting Request, Office of the General Counsel, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

(3) The Commissioner to whom a matter has been assigned for presentation to the Commission shall have the authority to make available to the public, prior to consideration of that

matter at an open meeting, material sufficient to inform the public of the issues likely to be discussed in connection with that matter.

(c) *Closed meetings.* (1) Whenever the Commission votes to close a meeting or series of meetings under these rules, it shall make publicly available within one day notices both of such vote and the General Counsel's determination regarding certification under 5 U.S.C. 552b(f)(1). Such determination by the General Counsel shall be made prior to the Commission vote to close a meeting or series of meetings. Further, except with respect to meetings closed under paragraph (c)(2) of this section, the Commission shall make publicly available within one day a full written explanation of its action in closing any meeting, and a list specifying the names and affiliations of all persons expected to attend, except Commission employees and consultants and any stenographer or court reporter attending for the sole purpose of preparing a verbatim transcript. All Commission employees and consultants may attend nonadjudicative portions of any closed meeting and members of Commissioners' personal staffs, the General Counsel and his staff, and the Secretary and his staff may attend the adjudicative portions of any closed meeting except to the extent the notice of a particular closed meeting otherwise specifically provides. Stenographers or court reporters may attend any closed meeting at which their services are required by the Commission.

(2) If a Commission meeting, or portions thereof, may be closed pursuant to 5 U.S.C. 552b(c)(10), the Commission may, by vote recorded at the beginning of the meeting, or portion thereof, close the portion or portions of the meeting so exempt.

(3) Closed meeting transcripts or minutes required by 5 U.S.C. 552b(f)(1) will be released to the public insofar as they contain information that either is not exempt from disclosure under 5 U.S.C. 552b(c), or, although exempt, should be disclosed in the public interest. The Commission will determine whether to release, in whole or in part, the minutes of its executive sessions to consider oral arguments. With regard

## Federal Trade Commission

to all other closed meetings, the General Counsel or the General Counsel's designee shall determine, in accordance with §4.9(c), which portions of the transcripts or minutes may be released.

(d) The presiding officer shall be responsible for preserving order and decorum at meetings and shall have all powers necessary to that end.

[42 FR 13541, Mar. 11, 1977; 42 FR 15409, Mar. 22, 1977, as amended at 42 FR 62912, Dec. 14, 1977; 43 FR 1937, Jan. 13, 1978; 43 FR 35684, Aug. 11, 1978; 63 FR 32978, June 17, 1998]

### §4.16 Privilege against self-incrimination.

Section 2.11 of Pub. L. 91-462 specifically repeals paragraph 7 of section 9 of the Federal Trade Commission Act. Title 18, section 6002, of the United States Code provides that whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before or ancillary to:

(a) A court or grand jury of the United States,

(b) An agency of the United States, or

(c) Either House of Congress, a joint committee of the two Houses, or a committee or a subcommittee of either House, and the person presiding over the proceeding communicates to the witness an order issued under section 6004, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order. Title 18, section 6004, of the United States Code provides that:

(1) In the case of any individual who has been or who may be called to testify or provide other information at any proceeding before an agency of the United States, the agency may, with the approval of the Attorney General, issue, in accordance with subsection (b) of section 6004, an order requiring the individual to give testimony or provide

## §4.17

other information which he refused to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in title 18, section 6002, of the United States Code;

(2) An agency of the United States may issue an order under subsection (a) of section 6004 only if in its judgment

(i) The testimony or other information from such individual may be necessary to the public interest; and

(ii) Such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.

(18 U.S.C. 6002, 6004)

[37 FR 5017, Mar. 9, 1972. Redesignated at 45 FR 36345, May 29, 1980]

### §4.17 Disqualification of Commissioners.

(a) *Applicability.* This section applies to all motions seeking the disqualification of a Commissioner from any adjudicative or rulemaking proceeding.

(b) *Procedures.* (1) Whenever any participant in a proceeding shall deem a Commissioner for any reason to be disqualified from participation in that proceeding, such participant may file with the Secretary a motion to the Commission to disqualify the Commissioner, such motion to be supported by affidavits and other information setting forth with particularity the alleged grounds for disqualification.

(2) Such motion shall be filed at the earliest practicable time after the participant learns, or could reasonably have learned, of the alleged grounds for disqualification.

(3)(i) Such motion shall be addressed in the first instance by the Commissioner whose disqualification is sought.

(ii) In the event such Commissioner declines to recuse himself or herself from further participation in the proceeding, the Commission shall determine the motion without the participation of such Commissioner.

(c) *Standards.* Such motion shall be determined in accordance with legal standards applicable to the proceeding in which such motion is filed.

(15 U.S.C. 46(g))

[46 FR 45750, Sept. 15, 1981]